IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.625 OF 1991

1. Indian Food Processing Industry
   Association, a Soceity registered
   under the provisions of the
   Societies Registration Act, 1860
   having their office at 3,
   Sadashiv Street, Bombay - 400 004.

2. P.S.Purohit,
   Hon.Secretary of the Indian
   Food Processing Industry
   Association, having his office
   at 3, sadashiv Street, Bombay 400 004.

3. Maharashtra State Pickles & Spices
   Manufacturers Association, having
   its office at 554, Market Yard,
   Gultekdi, Pune 410 037, through
   its Director, Mr.Rajkumar Chordia.

4. M/s.American Dry Fruits Stores,
   a registered Partnership, having
   their office at 17-G, Cawasji
   Patel Street, Bombay 400 023. .. Petitioners

V/s

The Union of India,
through the Ministry of Health and
family Welfare (Department of Health)
and the Ministry of Food Processing
Industries. .. Respondents

....

Mr.B.Saraf i/by M/s.Pravin Mehta & Mithi & Co.for the Petitioners.

Mr.Suresh Kumar with Mr.D.A.Dubey for the Respondents.

CORAM: S.RADHAKRISHNAN &
S.J.VAZIFDAR, JJ.
DATE : 21.9.2004.

JUDGMENT: (Per S.Radhakrishnan, J.)

1. This Petition is filed by the Petitioners basically challenging a notification issued by the Central Government dated 23rd August, 1990 to the extent it

introduces a condition of quality as regards pickles in oil. This Petition raises an interesting question as to whether the "pickles in oil" should be covered with oil so as to form a layer of not less than 0.5 cm above the contents or the percentage of oil in pickle should not be less than 10%.

2. Mr.Saraf the learned Counsel for the Petitioners took us through the provisions of the Prevention of Food and Adulteration Act, 1954 and the Prevention of Food Adulteration Rules, 1955 and also the Notification dated 23rd August, 1990 in so far as it introduces Entry A.16.16 in Appendix "B" to the Prevention of Food Adulteration Rules, 1955. The said Entry A.16.16 introduced in Appendix "B" reads as under:-

> "A.16.16 - Pickle means the preparation made from sound, clean, raw or sufficiently mature fruits or vegetables or a combination of both free from insect damage or fungus attack preserved in salt, acid, sugar or any combination of the three. The pickle may contain onion, garlic, ginger, sugar, jaggery, edible oils, spices, spice extract or oil of turmeric, pepper, chillies, fenugreek, mustardseed or powder, vegetable ingredients, asafoetida, bengal gram, lime juice, lemon juice, green chillies, vinegar or acetic acid, citric acid, dry fruit including raisins and fruit nuts."

3. Referring to the above Entry A.16.16, the learned Counsel Mr.Saraf appearing for the Petitioners has contended that the salt, acid or sugar or a combination of the three is used as a preservative and that the oil is not preservative, and as such, the Respondents cannot compel the manufacturers of pickles necessarily to have 0.5 cm layer of oil above the contents. Mr.Saraf has

also brought to our notice that there are three kinds of pickles mentioned therein, which are (i) Pickles in Citrus Juice or Brine, (ii) Pickles in Oil and (iii) Pickles in Vinegar. The learned Counsel for the Petitioners has further contended that the oil does not play a role of preservative in respect of pickles and that the oil component is not relatable to the maintenance of standard or quality of the pickles. Thus, according to Mr.Saraf, the specification of a minimum quantity of oil has no co-relation whatsoever to the maintenance of the quality of the pickle, the oil is not a preservative, and as such, the said specification to compel the manufacturers of pickles to provide for 0.5 cm layer of oil above the contents is arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India.

4. So far as Rule 53 of the Prevention of Food Adulteration Rules, 1955 is concerned, it provides for classification of preservatives in two parts viz.Class-I Preservatives and Class-II Preservatives. In Class-I preservatives there is a mention of common salt, sugar, Dextrose, Glucose, Spices, Vinegar or Acetic Acid, Honey and Edible Vegetable Oil. Edible Vegetable Oil is mentioned at item (l) under the category of Class-I Preservatives. Thus, it is relevant to note that as per

the provisions of Rule 53 of the Prevention of Food Adulteration Rules, 1955 the edible oil comes under the category of one of the preservatives in Class-I Preservatives. Rule 53 also provides for Class-II preservatives.

5. Mr.Saraf, the learned Counsel for the Petitioners thereafter referred to Rule 55 of the said Rules, which provides for the restrictions in use of Class-II Preservatives. The table showing the use of Class-II Preservatives restricted to various group of foods has been given in Rule 55, in which, for the food article at item No.19 viz.**Pickles and Chutneys made from fruit or vegetables,** the prescribed preservative is shown as Benzoic Acid or Sulphur Dioxide. Mr.Saraf therefore sought to contend that as per the provisions of Rule 55 of the the said Rules, for the Pickles and Chutneys made from fruit or vegetables the only Class-II preservative which can be used is the Benzoic Acid or Sulphur Dioxide, and there is no mention of oil as a preservative. Referring to Entry A.16.16 he sought to emphasis that only the salt, acid, sugar or any combination of the three is the preservative which can be used in the pickle and the oil is not used as a preservative but only as a medium. Therefore it is the contention of the learned Counsel for the Petitioners

that the condition prescribed by the Notification dated 23rd August, 1990 requiring thereby that the pickle shall be covered with oil so as to form a layer of not less than 0.5 cm above the contents is irrational, unjust, unfair and violative of Articles 14 and 19(1)(g) of the Constitution of India.

6. Mr.Saraf, the learned Counsel for the Petitioners also referred to Exhibit "D3" to the Petition which is a special article on the subject **Role of Dietary Fats in the Pathogenesis of Diabetes and Atherosclerosis** by Dr.Bihari S.Raheja. Referring to the said article, Mr.Saraf has sought to point out that excessive consumption of oil is a cause of diabetes and heart ailment and thus the requirement of high quantity of oil in pickles as introduced by the aforesaid Notification dated 23rd August, 1990 would contribute to the increased risk of physical ailments known to be caused by consuming exeessive oil.

7. Mr.Saraf has brought to our notice that the non-compliance of the aforesaid condition under the aforesaid notification with regard to the Prevention of Food Adulteration (Fifth Amendment) Rules, 1990 imposes penal consequences. He has submitted that after filing of the petition, prosecution was initiated against the

members of the Petitioners. According to him, the Respondents have introduced an arbitrary condition and are seeking to prosecute the members of the Petitioners for non-compliance of the same. He has therefore contended that by compelling all the pickle manufacturers to adhere to the condition introduced by the aforesaid Notification, would cause serious repercussions to the pickle manufacturers.

8. On the other hand Mr.Suresh Kumar, the learned Counsel appearing for the Respondents has pointed out that it is totally erroneous to contend that the oil is not a preservative. While referring to Rule 53 of the Prevention of Food Adulteration Rules, 1955, he emphasised that the edible vegetable oil is a Class-I preservative as mentioned at item (l) therein. While referring to Entry A.16.16 in Appendix "B" to the Rules, Mr.Suresh Kumar has contended that it is clearly provided in the Combination of Pickles viz.Pickles in Oil, that the pickle shall be covered with oil so as to form a layer of not less than 0.5 cm above the contents or the percentage of oil in pickle shall not be less than 10 percent. Mr.Suresh Kumar has contended that if the Petitioners are to contend that the edible vegetable oil is not a preservative, then it is for the

Petitioners to clearly establish that they are not using edible vegetable oil as a preservative and that they are using it only as a medium. According to Mr.Suresh Kumar, the pickle manufacturers have to comply with the aforesaid condition which provides that the pickle shall be covered with oil so as to form a layer of not less than 0.5 cm above the contents as per the Prevention of Food Adulteration (Fifth Amendment) Rules, 1990.

9. After hearing both the parties and after having considered the above provisions it is very clear that even the edible vegetable oil can be used as a preservative in pickles as clearly mentioned in Rule 53(i) of the Prevention of Food Adulteration Rules, 1955. Under the provisions of Rule 53(i) of the said Rules, the edible vegetable oil comes at item (l) under the category of Class-I Preservative. Therefore we do not find any substance in the contention of Mr.Saraf (the learned Counsel for the Petitioners) that the edible vegetable oil is not and cannot be used as a preservative in the pickles. We find substance in the contention of Mr.Suresh Kumar (the learned Counsel for the Respondents) that the edible vegetable oil is a preservative based on the provisions of the aforesaid Rule 53 of the Prevention of Food Adulteration Rules, 1955. We are not therefore inclined to interfere in

this matter. We do not find any merit in this Petition. Hence the Rule stands discharged. Petition stands disposed of.

10. However we make it clear that so far as the prosecutions initiated against the various manufacturers of pickles, the concerned manufacturers are at liberty to point out that in the pickles which they manufacture they use the edible vegetable oil only as a medium and not as a preservative, and it is for the concerned learned Metropolitan Magistrate to decide the same based on the material available, and we are not expressing any opinion on the same.

(S.RADHAKRISHNAN,J.)

(S.J.VAZIFDAR,J.)